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L. P. Cheatham

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L. P. CHEATHAM.

JUNE 17, 1846.

Read, and laid upon the table.

Mr. R. CHAPMAN, from the Committee on Indian Affairs, made the following

REPORT :

The Committee on Indian Affairs, to whom has been referred the petition of L. P. Cheatham, of Davidson county, Tennessee, praying compensation for alleged damages sustained by reason of a violation of contracts made with him, as he states, by the agents of the government for the removal of the Cherokee Indians, about the year 1832, beg leave to report :

That the whole merits of the claim are so fully set forth in the report of the Commissioner on Indian Affairs thereon, dated January 23, 1844, a copy of which was transmitted to Major A. J. Donelson by the Secretary of War, stating his approval thereof, on the 26th of that month, that the same is taken by the committee as a full statement of all the facts of the case, and adopted as the report and the conclusion of the committee.

Report on the communication made to the Secretary of War by L. P. Cheatham, esq., of October 31, 1843, and referred to the office of Indian Affairs, and forwarded to the Secretary by A. J. Donelson, esq., November 21, 1843.

On the 2d April, 1832, Captain McClintock, of the United States army, and disbursing agent in the Cherokee removal, entered into a contract with Mr. Cheatham, of which the following is the article under which Mr. Cheatham claims damages or remuneration for losses sustained :

"1st. That the said Leonard P. Cheatham shall, at any time during the emigration of the Cherokees, at fifteen days' notice, provide good and sufficient steamboat transportation, and at such place on the Tennessee river below the Muscle shoals, then accessible for steamboats, as shall be appointed by the agent for the removal and subsistence of Indians, and receive on board all the Cherokee emigrants which shall then and there be designated for transportation by the said agent, or other authorized agent of the United States, together with their effects and stores, and convey them to the Cherokee agency, on the Arkansas river, or as near thereto as the navigation by steamboat will admit."

Under this contract Mr. Cheatham proceeded to remove one party of Indians in the season of 1832.

In August, 1833, J. W. Harris, lieutenant in the United States army, was detailed to act in lieu of Captain McClintock. On the 28th December Ritchie & Heiss, print.

ber, 1833, the department said to Lieutenant Harris, "Enclosed are copies of contracts made by Captain McClintock, a former disbursing agent of the Cherokees; they will perhaps aid you in entering into similar agreements." Lieutenant Harris, having no idea that the contract with Mr. Cheatham was intended or expected, by either party, to be of force longer than one season of emigration, i. e. the summer and fall of 1832, proceeded to invite, through the newspapers of Nashville, proposals for transportation. But Mr. Cheatham, claiming the *exclusive right* to transport *all the Cherokees*, notified Lieutenant Harris to that effect; and on 29th December addressed a letter to Hon. F. Grundy and John Bell, then at the seat of government, requesting them to use their influence with the department, and have Lieutenant Harris instructed on the subject. On the 18th January, 1834, Lieutenant Harris requested Captain McClintock to communicate to the department his impressions in regard to the contract; and on the 7th February, Captain McClintock refers the department to his letter of the 2d April, 1832, enclosing the said contract. In this letter he says of Mr. Cheatham: "He wished to have inserted an article binding the United States to employ him exclusively in removing the whole Cherokee nation; but such an article appeared to me to be inadmissible. I thought I might give him the assurance, however, that the department would always give him the preference over others offering only equal terms." But in the meantime the letter of Mr. Cheatham to Messrs Grundy and Bell having been referred to the department, the contract was submitted to the consideration of the Attorney General for his opinion thereon. The Attorney General, it seems, gave a *verbal decision* "that Mr. Cheatham's contract still entitles him to employment in the Indian removal."

On the 23d January, 1834, the department informed Lieutenant Harris that "Captain McClintock had certainly not been authorized, nor did he intend to make a contract of so extensive character;" but he was at the same time informed of the opinion of the Attorney General, and instructed "to make no contract for transportation in steamboats from the Muscle shoals, or from any other proper point of departure, that will interfere with the rights of Mr. Cheatham; and you will, if he meets your requisitions, carry fully into effect with him the stipulations of his contract."

Under this contract Mr. Cheatham made two trips, one in 1832, and the other in 1834. These trips were made whilst the government was endeavoring to induce the Cherokees voluntarily to remove, under the provisions of the treaty of 1828, and are believed to have been the last Indians removed by the government prior to the treaty of 1835-'36.

From the action of the department, it is perfectly manifest that it did not consider Mr. Cheatham's contract as entitling him to the *exclusive right* to transport the whole nation of Cherokees: for, after his last trip in 1834, various modes of removal were had under advisement by the government; and, indeed, nothing more was heard or said of Mr. Cheatham's contract, no intimation from him that he expected again to be employed in the removal, much less of his right to remove the whole nation. But Mr. Cheatham now states that "he retained his interest in said boats for several years, expecting, annually, to be called on to fulfil the contract." How such an expectation could have been hopefully or rationally entertained, it is not easy to perceive.

Soon after he made the trip in 1834, the government adopted a new

course of policy and action in reference to Cherokee emigration, entering upon a negotiation for a new treaty, during which the emigration was obstructed by insuperable obstacles. The negotiation was a protracted one, involving many important and delicate questions, which gave rise to collisions of opinions and feelings which threatened to disturb the public peace, and the final issue of which was altogether problematical. Of all this Mr. Cheatham must have been fully cognizant. Nor, after the ratification and publication of the treaty, could he have failed to see that it imposed upon the government new obligations, wholly incompatible with his expectation of transporting the whole Cherokee nation. It invested the Indians with rights which utterly excluded any such claim of Mr. Cheatham.

And it cannot but be regarded very strange that Mr. Cheatham should, in view of all these circumstances, have kept his boats unemployed, or engaged in enterprises of comparatively little profit, because he waited for years in hopes of engaging them again in the public service. For admitting the correctness of the Attorney General's "verbal decision," herein mentioned, let us see what is the extent or import of that decision. It is not merely that Mr. Cheatham's contract still entitled him to *employment* in the Indian removal. Well, he was again employed in the removal; and removed all the Cherokees removed by the government, under the then existing relations of the government to the Indians. Were not his contract and the opinion of the Attorney General fully met and satisfied thereby? The opinion of the Attorney General surely did not intend that Mr. Cheatham was entitled to transport the whole Cherokee nation; and that at whatever periods, and under whatever circumstances, or treaty stipulations, they should be removed. Such an opinion would have been preposterous.

But if Mr. Cheatham has any equitable claim upon the government for indemnity, it is one which should be presented to Congress. It is not, nor can it be, so presented to this department as to bring it within the province of the executive branch of the government.

His claims for services actually rendered have long since been paid. He now presents no definite claim, but says he is of opinion, could he have got the removal of all the Cherokees, "he could not have made less than thirty-five or forty thousand dollars clear profit."

Respectfully submitted.

T. HARTLEY CRAWFORD.

JANUARY 23, 1844.

Hon. J. M. PORTER,

Secretary of War.

WAR DEPARTMENT,

January 26, 1844.

SIR: Your letter of the 21st of November was referred to the Commissioner of Indian Affairs, with all the papers in relation to the claim of L. P. Cheatham. His report, in which this department fully concurs, is herewith transmitted. The papers will remain on file subject to your orders.

Very respectfully, your obedient servant,

J. M. PORTER.

Major A. J. DONELSON, *Nashville, Tennessee.*

The committee, concurring fully in the views expressed in the said report, and in the conclusion that the petitioner has no cause for this allegation, that he has sustained damages by the failure of the government to comply with the contracts made with him as aforesaid, recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted.